

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	Cr. No. 18-10399-DPW-1
)	
BRIAN R. WALSH,)	
Defendant)	

STATUS REPORT OF THE UNITED STATES

Pursuant to the Court's oral Order of October 6, 2021, the government submits the following plan of the attempts that it would take to enforce a forfeiture order for the Shadow Paintings [dkt. no. 97.1]. By way of background, the defendant, for the first time, provided information through counsel that, in 2011, he transferred the Shadow Paintings to Ezra Gallery in New York that the owner of the gallery, Ezra Chowaki, was convicted of fraud and sentenced to two years; that the gallery went bankrupt; and that he dealt with a former employee there.

Separately, the FBI found an intermediary owner of one of the Shadows Paintings, who told the FBI that he purchased a single Shadows Painting from a gallery (not the Ezra Gallery), that he verified that the painting bore the Warhol Foundation stamp, and that he sold it again. The FBI just learned from that intermediary owner that the gallery from which he purchased the Shadow Painting had purchased it from another gallery (also not the Ezra Gallery) and that he sold it to another buyer, who sold it to another buyer, who may still own at least one Shadow Painting. Accordingly, if what the defendant reported is true, it appears that, before bankruptcy, the Ezra Gallery sold one, and likely both, of the Shadows Paintings and the FBI still does not know where they are, although it has a solid lead on one painting.

The government intends to take the following steps:

- Deposition of the defendant within the next month, to accommodate the parties' schedules and before the defendant is ordered to report to the custody of the United States Marshal for the service of a sentence¹;
- Enquiry, followed by a subpoena pursuant to Fed. R. Crim. P. 32.2(b)(3)², if necessary, to the bankruptcy trustee for Ezra Gallery, for information and records concerning the disposition of the Shadows Paintings;
- Enquiry to Christie's for information and records concerning the buyer of the Dollar Sign (the government believes that it lacks authority pursuant 32.2(b)(3) to issue a subpoena);
- Further investigate the leads provided by the intermediary owner; and
- Place the artwork on the National Stolen Art File, maintained by the FBI.

Of course, it is not clear that the facts, once learned, will justify seizure of the paintings, through the proposed preliminary order of forfeiture (Docket No.97-1) (providing "[p]ursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, the United States is hereby authorized to seize the Paintings and maintain them in its secure custody and control") or the

¹ 21 U.S.C. § 853(m) authorizes the government to take depositions "[i]n order to facilitate the identification and location of property declared forfeited ..."

² Fed. R. Crim. P. 32.2(b)(3), in part, authorizes the government to, upon entry of the preliminary order of forfeiture, "conduct any discovery the court considers proper in identifying, locating, or disposing of the property ..." *See also* 21 U.S.C. § 853(m), incorporated by 28 U.S.C. § 2461(c) (authorizing the production of "any designated book, paper, document, record, recording, or other material not privileged ... at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.").

issuance of a seizure warrant pursuant to 18 U.S.C. § 981(b) and/or 28 U.S.C. § 2461(c) incorporating 21 U.S.C. § 853(f), or ultimately forfeiture.

The government proposes that the Court order the government to submit a further status report in 60 days.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

s/ Timothy E. Moran
TIMOTHY E. MORAN

Date: October 7, 2021